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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/825,490

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Bradley W. Johnson

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NIXON & VANDERHYE, PC

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EXAMINER

HOEL, MATTHEW D

ART UNIT

PAPER NUMBER

3714

MAIL DATE

DELIVERY MODE

05/27/2009

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/825,490

Applicant(s)

JOHNSON, BRADLEY W.

Examiner

Matthew D. Hoel

Art Unit

3714

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 01/14/2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 40, 42-47, 49-59 and 82-90 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 40, 42-47, 49-59 and 82-90 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SF/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

3. Claims 40, 42, 43, 46, 49 to 51, 54 to 59, 82 to 84, and 87 to 90 are rejected under 35 U.S.C. 103(a) as being unpatentable over Brosnan et al. (U.S. 6,656,040 B1) in view of Astaneha (U.S. patent 6,302,395 B1) and Ungaro, et al. (U.S. pre-grant publication 2003/0036426 A1).

4. As to Claims 40, 56, and 82: '040 discloses all of the limitations of these claims, but lacks specificity as to the first game being a card game with a live dealer position and a vertically disposed game outcome display. Brosnan discloses a gaming comprising a one round of a first game of chance having a first game outcome. The first game of chance allows the player to place a first wager at a game player position and potentially entitling the player to a first prize if a winning outcome occurs (4:25-42, Figs.

4 & 7). The first game of chance has a first game play area and includes a first wagering scheme, at least two individual card wagering positions and a first wager input (4:54-67). For example, the player may play two poker games in parallel and therefore there would be two individual card-wagering positions. A second game of chance has a second game play area and has a second game outcome. The second game of chance allows the player to place a wager and potentially entitling the player to a second prize if a winning outcome occurs. The second game of chance comprises, a second wagering scheme, a second game player area and a second wager input (4:25-67, Figs. 4 & 7). The first game outcome and the second game outcome are independent (3:45-50). '040 teaches the first and second game outcomes not being combined to provide an outcome separate from the first and second game outcomes (Fig. 7; 15:29-16:13, esp. 15:50-65). The award of the first prize is independent of the second game outcome and the award of the second prize is independent of the first game outcome (3:45-50). The player may wager on either or both of the first and second games of chance (8:22-39). The player is allowed to place a wager on the second game of chance regardless of whether the player placed a wager on the first game of chance (4:25-67, Fig. 7). The player is allowed to place a wager on a first wagering scheme and the step of allowing the player to place a wager on a second game of chance having a second game of chance outcome comprises allowing the player to place a wager on a second wagering scheme. The second wagering scheme being distinct from the first wagering scheme (See Brosnan col. 4 lines 25-67; col. 8 lines 22-39; Fig. 7). '040 allows wagers to be made independently on first, second, and third games of chance. The abstract of '040

and Fig. 7 disclose three independent games, the outcomes of which are determined independently of each other as the player wagers on each game separately (15:28-16:12, esp. 15:50-53 determining outcomes independently). For these reasons, the player may wager on the second game of chance at least while the live first game is being played.

5. '395, however, teaches of a combination, dice, card and roulette gambling game. Players play parts of either two or all three games on the same gaming table. The table has a live dealer position and first card wagering positions for the first game of chance at the table. The games are conducted by a live dealer (4:31-48, 6:50-7:2, Fig. 3). At least one card is dealt to the player (6:50-53). '395 teaches the second game play area (roulette wheel, roulette being the second game) being mounted on a table (Fig. 1). It would have been obvious to one of ordinary skill in the art at the time the invention was made to play the table with card wagering positions and roulette game of Brosnan to the simultaneous display of multiple wagering games as taught by '040. It has been well known throughout the art that casino games may be played at gaming tables with dealers. '395 that more than one type of game can be played at a gaming table at one time, as is done in the '040. Therefore, by playing the plurality of games of Brosnan at a gaming a table simultaneously, players' interest is retained for extended periods of time and therefore they will not retire from the game, as quickly which is desirable to the casino. Players also enjoy the personal contact with a live dealer versus an electronic machine. Furthermore, by playing multiple games at the same time, the amount of money a casino receives in wagers increases, the rate of coin-in is increased which

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increases profitability for the house; '040 discusses this at 3:8-17 & 9:1-12. It also would have been obvious to one of ordinary skill in the art at the time the invention was made to have one of the secondary games of Brosnan be roulette. Roulette is a popular casino game that many players enjoy. Consequently, by including roulette as the secondary game, many more people would desire to play the game. It is further obvious to use a video display to display the roulette wheel, just as it is well known throughout the art to convert electronic games to table games it is just as obvious to convert table games to electronic games. Therefore, it is obvious to use an electronic video display for the wheel as one would in Brosnan. Some players enjoy the electronic displays while others enjoy actual wheels; therefore, by using both, one can appeal to both types of individuals.

6. '426, however, discloses a vertically disposed game display connected to the top surface (54, Figs. 1 & 10; Fig. 3, 30). This vertical display is an outcome display in that the amount of the jackpot won is an outcome or result of the game, "outcome" not being limited to a combination of indicia as the applicant appears to intend (jackpot \$460, pro-aggressive jackpot \$15,763,55). It would have been obvious to one of ordinary skill in the art at the time of invention to have applied the vertical display of '426 to the combination of '040 and '395. The vertically disposed display makes no difference in the play of the game or its outcome, and is merely physical structure that does not directly relate to how the games of '395 or '326 are actually played, it simply displays the result of the roulette game. For one, the vertically disposed display would have had the advantage and effect of making the game outcomes more visible to the players and

spectators of the game. It would also have the advantage of providing the roulette game in a format familiar to players of roulette. Also, these types of vertical displays were widely known to be applied to roulette games at the time the invention was made, so one of ordinary skill in the art would have been motivated to apply such a display to a roulette game.

7. As to Claim 42: '040 teaches the award of the first prize being independent of the second game outcome and the award of the second prize being independent of the first game outcome (3:45-50, 4:28-34).

8. As to Claim 46: '395 teaches a second game being roulette in which the dealer rotates the wheel (6:22-26).

9. As to Claim 49: The first and second games of '040 are operatively coupled to each other (14:35-50).

10. As to Claims 50 and 51: '395 teaches that the table has a live dealer position and first card wagering positions for the first game of chance at the table. The games are conducted by a live dealer (4:31-48, 6:50-7:2, Fig. 3). The roulette wheel of is mounted above the table's surface (6:23-38).

11. As to Claim 54: It is known in the art that a second game like keno of '040 (4:1-4) has more than two outcomes. In a keno game, the player has eighty numbers to choose from, and the player is able to attempt to obtain patterns of winning combinations based on adjacent numbers.

12. As to Claim 55: '040 teaches that the second game can be keno (4:1-4).

13. As to Claim 57: '040 teaches a first game play area being a card wagering layout area where at least one card is dealt to the player (3:65-67, Fig. 4).
14. As to Claims 43 and 58: '395 further discloses that a second game play area is a roulette betting area that is located between the dealer position and the card wagering position (Fig. 1, roulette wheel spun by dealer, 4:31-48).
15. As to Claim 59: The roulette wheel of '359 is mounted adjacent to the roulette betting area (Fig. 1, 6:22-26).
16. . As to Claim 83: '426 discloses a control on the horizontal surface for playing the second game of chance displayed on the vertically mounted display (player control panel 64, Figs. 1 & 13, Para. 23).
17. As to Claim 84: The display device of '426 for playing the second game of chance (roulette) is mounted to the table by a pole connected to one end of the table (Fig. 1, 54; Fig. 3, 30).
18. As to Claim 87: '040 discloses the keno games being on vertical displays (11:42-67, Figs. 1 & 4).
19. As to Claims 88 to 90: Electronic player and dealer stations are implemented with the CRTs, monitors, or touchscreens specified by '040 in 5:43-52. '040 teaches live play (4:11-24; Fig. 8, 16:13-17:18, generally; 17:10-18, specifically, bonus game for one player on the common display triggering a bonus game for all of the players).
20. Claim 45 is rejected under 35 U.S.C. 103(a) as being unpatentable over '040, '395, and '426, in further view of Huard et al. (U.S. patent 5,743,800 A).

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21. As to Claim 45: The combination of '040, '395, and '426 lack in specifically disclosing that the first game is blackjack. '800, however, teaches of a first game of blackjack that has an auxiliary game. The first wagering scheme is a blackjack-betting layout (2:50-55; blackjack first game of preferred embodiment, 8:6-32). It would have been obvious to one of ordinary skill in the art at the time the invention was made to have made blackjack be the first game of chance as done in '800, applied to the combination of '040, '395, and '426. Blackjack is a very popular casino game and would entice numerous players to play the game as well as the secondary game.

22. Claim 47 is rejected under 35 U.S.C. 103(a) as being unpatentable over Brosnan et al., in view of Astaneha and Ungaro, in further view of Adams (U.S. patent 5,911,418 A).

23. As to Claim 47: The combination of '040, '395, and '426 lacks in disclosing requiring a player to wager on both the first and second games of chance. '418, however, teaches of a card game with a second game of chance. In order to play the second game of chance, i.e. spin the wheel, the player must have wagered on both the first game and second game (2:51-67). It would have been obvious to one of ordinary skill in the art at the time the invention was made to require a player to bet on both games of chance. By requiring a player to bet on both games of chance, the casino makes more money since more bets are being placed. Therefore, it is profitable to have players bet on multiple games.

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24. Claims 44, 52 to 53, 85, and 86 are rejected under 35 U.S.C. 103(a) as being unpatentable over '040, '395, and '426, in further view of Pohanka (U.S. patent D273,310 S).

25. As to Claims 44, 52, 53, 85, and 86: The combination of '040, '395, and '426 lack in disclosing a wheel rotating about a horizontal axis or that the roulette betting area comprises a video display. '310, however, teaches of an electronic roulette game housing in which the rotatable wheel is mounted to the machine such that it may rotate about a horizontal axis and the roulette betting area comprises a video display (See Pohanka Fig. 1). '310 also teaches a roulette or rotatable wheel located above a video screen on a video gaming device. The combination of '040, '395, '426, and '310 would thus have a roulette or rotatable wheel located above the roulette betting area, table, and first and second game play areas. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have the wheel in '395 rotate about a horizontal axis as done in '310. By rotating the wheel about a horizontal axis, the wheel would be clearly visible to more players since they would not have to gather around the wheel to see the outcome. Therefore, more people would be able to see the outcome of the game. It is also obvious to use a video display for the roulette betting area. By using a video display, bets can be processed electronically so that the dealer can concentrate on other functions of the game instead of the betting and it can be assured that the bets are accurately recorded.

Response to Arguments

Applicant's arguments filed 01-14-2009 have been fully considered but they are not persuasive. Concerning the limitation of Claim 40 and 56 of a game having a game display located adjacent to the dealer position, the game display being adapted to display the second game outcome, and a controller being in communication with the game display, the controller being adapted to control the game display—the combination of Brosnan and Astaneha would inherently have this as discussed in the response to the applicant's arguments. Astaneha in Col. 4, Lines 38 to 41 discloses "...a rotatable wheel to be rotated by a dealer and positioned adjacent the dice table, the rotatable wheel having a plurality of segmented areas with different numbers thereon..." (Fig. 1). This rotatable wheel is in a position adjacent to the dealer's position as the roulette wheel is spun by the dealer. In the video game format resulting from the 103 combination with Brosnan, there would be display controlled by a controller that is adjacent to a dealer position, as the dealer position and the roulette reel would both be shown on adjacent displays or shown adjacent to each other on the same display. Further, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have applied this vertically disposed game display of '326 to the combination of '040 and '395. Regarding a live dealer position such as that taught in '395 (Fig. 1, 4:38-39, 6:22-25, live dealer 6:50-55), one of ordinary skill in the art at the time of invention would have thus known how to implements a horizontal-table game with electronic displays at the dealer and player stations. Such electronic player and dealer stations could be implemented with the CRTs, monitors, or touchscreens

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specified by '040 in 5: 5:43-52 by one of ordinary skill in the art. '040 (Brosnan) does teach live play (4:11-24; Fig. 8, 16:13-17:18, generally; 18:10-18, specifically, bonus game for one player on the common display triggering a bonus game for all of the players). '040 (Brosnan) would not teach away from or be rendered inoperable for its intended purpose by using its horizontal-table video displays in conjunction with the player and dealer stations of '395 (Astaneha). One of ordinary skill in the art at the time of invention would have known how to implements a horizontal-table game with electronic displays at the dealer and player stations. Such electronic player and dealer stations could be implemented with the CRTs, monitors, or touchscreens specified by '040 in 5: 5:43-52 by one of ordinary skill in the art. '040 (Brosnan) does teach live play (4:11-24; Fig. 8, 16:13-17:18, generally; 18:10-18, specifically, bonus game for one player on the common display triggering a bonus game for all of the players).

Regarding the applicant's remarks on page 11, it is known that some of the games disclosed by '040 are table games, namely, keno and poker. It would have been obvious to one of ordinary skill in the art to substitute similar games such as bingo or blackjack. '040 at 6:20-22 discloses that the electronic gaming device may be modified to have displays that face upward, what is known as a "cocktail game" configuration. Such a modification would be especially suited to simulate games such as bingo, keno, blackjack, or poker which are played on game tables with decks of cards or with bingo or keno cards. The examiner believes that the table games of keno and poker taught by '040 practiced in a horizontal table-top format are merely an electronic practicing of previous games played on horizontal tables using cards and manually performed steps.

Quoting from *Leapfrog v. Fisher Price* (CAFC 06-1402, Page 7): " Accommodating a prior art mechanical device that accomplishes that goal to modern electronics would have been reasonably obvious to one of ordinary skill in designing children's learning devices. Applying modern electronics to older mechanical devices has been commonplace in recent years." Pages 9 & 10: "We agree with the district court that one of ordinary skill in the art of children's learning toys would have found it obvious to combine the Bevan device with the SSR to update it using modern electronic components in order to gain the commonly understood benefits of such adaptation, such as decreased size, increased reliability, simplified operation, and reduced cost. While the SSR only permits generation of a sound corresponding to the first letter of a word, it does so using electronic means. The combination is thus the adaptation of an old idea or invention (Bevan) using newer technology that is commonly available and understood in the art (the SSR). We therefore also find no clear error in the finding of the district court that one of ordinary skill in the art could have utilized the electronics of the SSR device, with the method of operation taught by Bevan, to allow a child to press each individual letter in a word and hear the individual phonemes associated with each letter to sound out the words." The examiner believes the modification of base reference '040 with the independent table games of '395 is merely combining prior art elements according to known methods to yield predictable results. '040 discusses multiple poker games being played at the same time with no indication of the rules of game play being any different than a game played with actual cards on a card table (12:55-63), so the horizontal table-top electronic format is an updated way of playing

previously known table games. Player inputs are made by a touchscreen (5:47-48; monetary inputs for wagers and losses are made by coin acceptors, bill validators, and coin trays (5:41-43). The applicant states that the fundamental difference between gaming machines (e.g., slot machines) and table games (e.g., poker, blackjack, and other table games) so as to provide two completely separate games thereon was not known prior to the applicant's invention. The examiner respectfully disagrees. '040 discloses slot machines and table games as described by the applicant in his remarks together (parallel slots, keno, and poker, 11:42-47). The applicability of '040 to be horizontally oriented to simulate table games is outlined above. The examiner does not believe there to be a nexus between the cited first and second independent games of the claims and the structure of the gaming device; it appears to merely be an intended use. Claim 40, for example, cites a table..., a live dealer position, at least two individual card wagering positions, a first wager input, a second game play area, a second wager input, a vertically disposed game outcome display..., and a controller. Claim 40 cites method-type limitations such as to play a live first game of chance having a first game outcome, the first game of chance allowing the player to place a first wager and potentially entitling the player to a first prize, a first wagering scheme, a second game of chance having a second outcome, the second game of chance allowing the player to place a second wager and potentially entitling the player to a second prize, wherein the first and second games are independent and their outcomes are not combined, a second wagering scheme, such that the player may wager on the second game of chance at least while the first game is being played. The only real use of the device

structure to play the first and second games appear to be the two separate playing areas for each game and the separate wager inputs. The rest of the method-type limitations are carried out by the player and the dealer. Regarding the comments on page 12, the structure of '395 is certainly capable of playing independent games, as there are separate roulette (38, Fig. 1; Fig. 4, 6:22-37) and card playing areas (Fig. 3, 6:50-55). The first (8:7-15), second (8:57-62), and third (9:1-12), each combining two or more of dice, cards, and roulette, are methods of game play using the structure of '395, but this does not limit the table game/roulette wheel structure of '395 from being used to play completely separate table and roulette games independently of each other. These combined games were not relied on in the rejections above. The examiner believes, however, that applying these combined games to the parallel tabletop games of '040 would not destroy '040 for its intended purpose, as the applicant appears to believe this is a teaching away. '040 in 3:45-50 states that the parallel games of '040 are typically independently determined, but that many different combinations of games can be played simultaneously on the machine, so there is some possibility that combined games could be played on this machine and it would still operate for its intended purpose. Regarding the comments on pages 12 to 14, the examiner demonstrated in the rejections above that '040 has the limitation that "the game outcomes determined by the gaming machine are independent of one another and do not depend on the game outcome presentation." The examiner was relying on the independent game results of base reference '040 and not the combined game results in '395: the first (8:7-15), second (8:57-62), and third (9:1-12), that the applicant believes teach away. The

combined games of '395 no more teach away than the combined game alternative embodiments of '040: pachinko game initiated based on result of slot game (14:35-50), bonus game initiated on pachinko result (14:51-60), or additional game play opportunity initiated on pachinko result (14:61-15:8). The combined games '040 (alternative embodiment of '040) and '395 do not pertain to the claim language and the examiner does not believe they teach away from combination. '040 states that the results in the combined game types are still independent (14:65-67). In the same manner the dice-card-roulette games of '395 have the dice, card, and roulette results generated independently and randomly. The remarks on pages 15 and 16 have been addressed above. The examiner respectfully disagrees with the applicant as to the claims' condition for allowance.

Citation of Pertinent Prior Art

26. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The chapter on keno in "Scarne's Complete Guide to Gambling," by John Scarne, 1961, Simon & Schuster, New York, N.Y., illustrates that keno has more than two possible outcomes.

Conclusion

27. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP

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§ 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

28. A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

29. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Matthew D. Hoel whose telephone number is (571) 272-5961. The examiner can normally be reached on Mon. to Fri., 8:00 A.M. to 4:30 P.M.

30. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter Vo can be reached on (571) 272-4690. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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31. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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